

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

MICHELLE C.,

Plaintiff,

v.

Civil Action No. 2:22-cv-00554

KILOLO KIJAKAZI,
Acting Commissioner of
Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

On December 6, 2022, plaintiff Michelle C. instituted this action seeking judicial review of the Acting Commissioner's final decision pursuant to 42 U.S.C. § 405(g). Pending before the court is plaintiff's complaint (ECF 2), which was previously referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). The magistrate judge filed her PF&R on June 14, 2023 (ECF 9), to which no party filed objections.

In her PF&R, the magistrate judge first found that the Commissioner's decision "clearly explained the basis for the mental [Residual Functional Capacity] finding and there was no unexplained disconnect between the ALJ's determination that Ms.

Richards-Ward's opinion was persuasive and the ALJ's RFC finding." ECF 9 at 17. Accordingly, the magistrate judge found no error in the Commissioner's mental RFC finding. Id. at 18. The magistrate judge then determined that the record failed to provide sufficient information "to evaluate whether the ALJ's RFC analysis of [plaintiff's] ability to see is supported by substantial evidence." Id. at 23. Based on this, the magistrate judge recommended that the matter be remanded "for further development and/or explanation of [plaintiff's] vision impairments." Id.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been addressed. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." (emphasis added)). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate

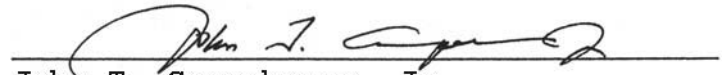
judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989). Objections in this case having been due on June 28, 2023, and none having been filed, this matter may be duly adjudicated.

Accordingly, it is ORDERED that:

1. The findings made in the magistrate judge's Proposed Findings and Recommendation be, and hereby are, adopted by the court and incorporated herein;
2. The defendant's request for affirmance of the decision of the Commissioner be, and hereby is, denied;
3. The plaintiff's request for reversal of the Commissioner's decision and remand to the Commissioner for further proceedings be, and hereby is, granted;
4. This civil action be, and hereby is, dismissed from the docket of this court.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: July 14, 2023

A handwritten signature in black ink, appearing to read "John T. Copenhaver, Jr.", is written over a horizontal line.

John T. Copenhaver, Jr.
Senior United States District Judge